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No. 794

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, *Petitioner,*

v.

BROTHERHOOD OF RAILROAD TRAINMEN and R. E. CARROLL, *Respondents.*

On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

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BRIEF FOR RESPONDENTS

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BRIEF FOR RESPONDENTS

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 367 F.2d 137, and is reproduced in the record (R. 149-152). The judgment of the District Court is not reported but is reproduced in the record (R. 62). The

Findings of Fact and Conclusions of Law upon which the judgment of the District Court was based are not reported but are reproduced in the record (R. 57-61).

JURISDICTION

The judgment of the Court of Appeals was entered on September 21, 1966 (R. 152-153). The petition for certiorari was filed on November 23, 1966, and was granted on January 9, 1967. The jurisdiction of this Court rests on Section 1254(1) of Title 28 of the United States Code (28 U.S.C., Section 1254(1)).

QUESTIONS PRESENTED

In the opinion of respondents, the following questions are presented:

1. Did the Court of Appeals properly determine that the Brotherhood of Railroad Trainmen (BRT), an unincorporated association whose headquarters are located in Cleveland, Ohio, as provided by its constitution, and which does not maintain any office in Colorado but has members located in that State, was not a resident of the judicial district of Colorado within the meaning of Title 28, Section 1391(b) of the United States Code, so that such judicial district was not the proper forum for a suit against the BRT under the Federal venue statute?

2. Did the Court of Appeals err in holding that there was no basis for liability against an individual for alleged damages to a railroad growing out of a strike based upon the Court's findings that the individual was chairman of a grievance committee of local union lodges on the property of the plaintiff carrier and that his only role in connection with the strike was to send to

the carrier notice of the strike decision by the national union and to thereafter advise the local unions of the issuance of a Federal court restraining order?

STATUTE INVOLVED

This case involves the provisions of Title 28, Section 1391 of the United States Code (28 U.S.C.A., Section 1391). These provisions are quoted in full in Appendix "A" hereto.

STATEMENT

The Denver and Rio Grande Western Railroad Company (D&RGW) asks this Court to reverse a judgment of the Court of Appeals which, in turn, reversed a judgment of the District Court awarding damages in the sum of $37,988.37 to the railroad against respondents BRT and R. E. Carroll, arising out of a brief strike conducted against the railroad by the BRT on May 16, 1960 (R. 57-62).

The strike in question was provoked by two violations by the D&RGW of collective bargaining agreements between the railroad and the BRT. These violations resulted in monetary claims by the affected railroad employees which were processed on the property of the carrier and before the National Railroad Adjustment Board in accordance with the provisions of Section 3, First, of the Railway Labor Act (45 U.S.C.A., Section 153). The actions of the Board are identified as Award No. 19372, dated December 17, 1959, and Award No. 19389, dated January 20, 1960.[1] In both of these cases the Adjustment Board sustained the

[1] These awards appear in the Printed Reports of the First Division of the National Railroad Adjustment Board, Volume 1, at pages 665 and 858.

claims and issued orders to the railroad to comply therewith. In the case of Award No. 19389, the railroad discontinued the illegal practice but refused to pay the employees' claim. In the case of Award No. 19372, the railroad refused both to honor the contract interpretation and to pay the claims.[2]

Thereafter, the BRT conducted a strike against the D&RGW on May 16, 1960, because of its refusal to honor the awards (R. 59). The railroad immediately sought and obtained an ex parte restraining order which was served at about 6:30 p.m. the same day on respondent R. E. Carroll, General Chairman of the Grievance Committee of BRT members on the railroad (R. 59). Mr. Carroll immediately began contacting local groups by telephone and telegram to call off the strike. It ceased in the Denver area about 8:30 p.m. and in the Salt Lake City area about 10:00 p.m. (R. 59). Thereafter, the BRT did not renew the strike or threaten to do so (R. 76).

The restraining order continued in effect by agreement of the BRT and the D&RGW until the District Court acted upon the railroad's motion for a preliminary injunction (R. 59). The District Court granted this motion on June 2, 1960, and thereafter on July 27, 1960, issued a permanent injunction based on the ground that the BRT could not strike to enforce an award of the National Railroad Adjustment Board. *Denver & R. G. W. R. Co.* v. *Brotherhood of Railroad*

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[2] The refusal of the D&RGW to accept the decision of the Adjustment Board with respect to the interpretation and application of the collective bargaining agreement involved in Award No. 19372 was not legally justified and was itself a violation of the provisions of Section 3, First, of the Railway Labor Act. *Gunther* v. *San Diego & Arizona Eastern Ry. Co.*, 382 U.S. 257.

Trainmen, et al., 185 F. Supp. 369 (1960).[3] This decision was subsequently affirmed by the Court of Appeals for the Tenth Circuit. *Brotherhood of Railroad Trainmen et al.* v. *Denver & R. G. W. R. Co.*, 290 F.2d 266 (1961), *cert. den.* 366 U.S. 966.[4]

The BRT and the individual employees involved then filed suit in the District Court to enforce the awards pursuant to the provisions of Section 3 of the Railway Labor Act. In each case, the District Court affirmed the determination of the Adjustment Board that the D&RGW had by its actions violated the collective bargaining agreements, but reduced the amount of the awards to a nominal sum through the application of common law contract principles.[5]

The Court of Appeals affirmed the judgment of the District Court with respect to Award No. 19372 (*Brotherhood of Railroad Trainmen, et al.* v. *Denver & R. G. W. R. Co.*, 338 F.2d 407, *cert. den.* 380 U.S. 972) on cross-appeals of the parties. The Court of Appeals reversed the judgment of the District Court with respect to Award No. 19389 on December 28, 1966, and

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[3] R. 59-60.

[4] At the time of the strike, no Federal court had held that a strike under the circumstances involved was prohibited by the Railway Labor Act. It was not until 1963 that this Court for the first time ruled on the right of a railway labor organization to conduct a strike under such circumstances. *Brotherhood of Locomotive Engineers* v. *Louisville & Nashville R. Co.*, 373 U.S. 33.

[5] *Cf.* this Court's statement in its recent decision in *Transportation-Communication Employees Union* v. *Union Pacific R. Co.*, — U.S. —, 17 L. Ed. 2d 264, decided December 5, 1966, to the effect that a collective bargaining agreement "is not an ordinary contract for the purchase of goods and services, nor is it governed by the same old common-law concepts which control such private contracts".

this action is now the subject of a petition to this Court for a writ of certiorari filed on March 13, 1967 (Case No. 1141).

The damage claims of the D&RGW were originally filed as counterclaims to petitions to enforce the Adjustment Board awards. They were dismissed by the District Court on the ground that they were not proper counterclaims under Section 3, First (p), of the Railway Labor Act. *Brotherhood of Railroad Trainmen, et al.* v. *Denver & R. G. W. R. Co.*, 31 F.R.D. 297 (1962). Thereafter, the railroad filed a separate action in the District Court asking damages from the BRT for alleged injuries suffered as a result of the strike of May 16, 1960 (R. 1-4). The BRT filed a motion to dismiss the action on the grounds of improper venue or in lieu thereof to quash the return of service (R. 4). The D&RGW then filed an amended complaint in which respondent R. E. Carroll and the chairmen of the BRT local lodges on the property of the railroad were added as parties defendant (R. 7-10). The BRT and the individual defendants responded with a motion to strike or dismiss the amended complaint on various grounds, including (1) that it did not set forth a cause of action against respondent Carroll or the local chairmen named therein, and (2) that the complaint could not properly be brought in the District Court for the District of Colorado under Title 28, Section 1391 of the United States Code (R. 10).

This motion was supported by an affidavit of the Acting General Secretary-Treasurer of the BRT which set forth that the headquarters of the BRT are located in Cleveland, Ohio, in accordance with the provisions of Section 3 of the Constitution of the BRT, and that the BRT does not maintain any office in Denver, Colorado. This affidavit also set forth that Mr. R. E. Carroll

was elected to his office as Chairman of the General Grievance Committee of employees of the D&RGW represented by the BRT by the chairmen of grievance committees of various local lodges of the BRT having members employed on the D&RGW (R. 11-12). The D&RGW did not file any counter affidavits. There were not before the District Court any further facts as alleged on page 10 of the brief of petitioner nor any of the material quoted in Appendix B to petitioner's brief.

The District Court denied the motion of the BRT, et al., without comment (R. 12). The statements in the brief of petitioner as to what the District Court "necessarily concluded" by its action are mere assumptions not supported by the record.[6]

When the D&RGW complaint came on for trial befor the District Court, the railroad did not allege that it had suffered any damage during the eight-hour period of the strike. All passenger and freight trains scheduled to operate on May 16, 1960, did, in fact, operate although some were delayed (R. 18, 60). The only damage claimed by the D&RGW was alleged loss of revenue to the carrier for shipments claimed to have been diverted by shippers during the period May 19, 1960, to June 1, 1960, when the BRT was enjoined from striking and there was no threat of a strike (R. 19-21, 25, 55, 60).

After trial, the District Court dismissed the action against the chairmen of the local lodges of the BRT on

[6] This is particularly true of the statement at page 10 of petitioner's brief that virtually all of the represented employees work and live in the judicial district of Colorado. There are no facts of record on this point.

the grounds that there was no mention made during the trial of such individuals (R. 60, 62). The District Court awarded damages based upon a finding that the Ford Motor Company and its suppliers diverted shipments from the D&RGW during the period after the strike ended (May 19, 1960—June 1, 1960) and that such diversion was proximately caused by the existing threat of a strike and the failure to secure an injunction against such strike (R. 59-62). The judgment ran against both the BRT and Mr. R. E. Carroll, although the District Court's Findings of Fact did not include any finding that Mr. Carroll was responsible for the strike (R. 57-62).

The BRT and Mr. Carroll appealed the judgment (R. 63). This appeal was based upon the grounds, among others, (1) that the District Court erred in denying the motion of the BRT, et al., to dismiss the complaint for improper venue, and (2) that the District Court erred in awarding damages against Mr. R. E. Carroll.[7] Upon consideration of the appeal, the Court of Appeals reversed the District Court (R. 152). The Court of Appeals held that the BRT is not a resident of the judicial district of Colorado, as required by Title 28, Section 1391(b) of the United States Code and con-

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[7] The appeal also raised the questions of (a) whether or not the D&RGW was entitled to recover damages from the BRT and Mr. Carroll because the strike was provoked at least in part by the action of the carrier in violating the Railway Labor Act by its refusal to accept the interpretation of the collective bargaining agreement set forth in Award No. 19372; (b) whether the D&RGW was entitled to damages for the threat of a future strike which, if it existed at all, was the threat of a lawful strike which could have been conducted only if authorized by the Federal courts; and (c) whether the evidence supported the damage award (R. 63-68).

sequently the complaint should have been dismissed as to it (R. 149-152). The Court of Appeals also held that the District Court erred in awarding damages against Mr. R. E. Carroll because the record showed that his role in connection with the strike was limited to sending the notice of the BRT strike decision to the D&RGW (R. 152).

The D&RGW asks this Court to reverse the decision of the Court of Appeals (Pet. Br., 41).

SUMMARY OF ARGUMENT

I

The petitioner D&RGW, supported by the railroad *amicus curiae* National Railway Labor Conference, argues that Section 1391(c) of Title 28 of the United States Code, which provides that any judicial district in which a corporation is incorporated or licensed to do business or is doing business shall be regarded as the residence of the corporation for venue purposes, should be read as also defining the residence of an unincorporated labor association, such as the BRT, for purposes of venue in non-diversity actions brought under Section 1391(b) of Title 28. The railroads agree that Section 1391(c) does not by its language include unincorporated associations. However, they argue that this is a necessary implication to be derived from the history of the venue statute and that in any event such an interpretation is required by the practicalities of litigation.

The argument that the interpretation urged by the railroads is a necessary implication from the history of the venue statute is based upon the erroneous premise that prior to the 1948 revisions of the general Federal venue statute the requirements of venue for corpora-

tions and unincorporated associations were identical. However, this was not the case prior to the 1948 revisions. A corporation in a non-diversity action could be sued only in the state of incorporation, regardless of where its principal place of business was located, and an unincorporated association could be sued only in the judicial district in which its principal place of business or headquarters were located. The railroads' argument is predicated upon dictum in the case of *Sperry Products* v. *Association of American Railroads,* 132 F.2d 408 (2nd Cir., 1942), to the effect that both corporations and unincorporated associations have a "presence" in states in which they are operating or doing business. However, such presence was not sufficient for venue and was so recognized in the *Sperry* case. Moreover, the adoption by Congress of the 1948 revisions broadening the venue provisions with respect to corporations, while making no changes in the existing rule as to unincorporated associations, argues very strongly for an intent by the Congress to differentiate between the two entities with respect to venue.

The further argument that the interpretation urged by the railroads is necessary for practical reasons of litigation amounts to nothing more than a bald assertion that this Court should change the language of a statute adopted by Congress for reasons which should be addressed to the Congress. The argument relies upon the decision in *Rutland Railway Corp* v. *Brotherhood of Locomotive Engineers,* 307 F.2d 21, *cert. den.* 372 U.S. 954, in which the Second Circuit clearly engaged in outright legislation. Not only is such a procedure in the interpretation of statutes contrary to all recognized rules of statutory construction while also doing violence to the basic theory of the separation of

powers within the Federal government, but the specific practical reasons assigned for such action have been rejected by this Court. In *United Steelworkers* v. *Bouligny,* 382 U.S. 145, a union made the same identical argument that there were no longer practical differences between a union and a corporation and consequently Section 1332 of Title 28 of the United States Code should be interpreted to give a union the same citizenship for purposes of diversity as a corporation. This Court rejected the argument on the grounds that it was a request to the Court to legislate and that the argument should be addressed to the Congress. The fact that this universal principle was set forth in a case involving the interpretation of Section 1332 of Title 28 while the present case involves the interpretation of Section 1391 does not affect the validity of the principle.

Finally, there is no merit to the practicality arguments advanced by the railroads. The claim that it is necessary to be able to sue a national union in any judicial district in which it has members in order to enjoin illegal strikes is completely refuted by the actual practice of the railroads in such situations, including the case of the strike which gave rise to the present litigation. In these cases, speed in stopping the strike is of the essence and this can be achieved only by suing and serving the responsible local officials of the union as was done in the present case. Nor is there any validity to the argument that the convenience of the parties is better served by permitting the national union to be sued under the Federal venue statute in any judicial district in which it has members. The present case is the clearest refutation of such an argument. Counsel for the railroad, the principal witnesses for the

railroad, and the documents supporting the principal evidence of the railroad were all located more than 1,000 miles from the judicial district of Colorado in which the suit was brought. It is apparent that the arguments of the railroads are designed to produce a rule of law which would permit them to choose their own Federal forum for suing a national union such as the BRT while at the same time the BRT has a limited number of forums for a suit against a carrier far removed from its home base.

II

The petitioner D&RGW argues that the Court of Appeals erred in directing the dismissal of the action against respondent R. E. Carroll, Chairman of the General Grievance Committee of employees represented by the BRT on the property of the railroad. The Court of Appeals found that Mr. Carroll was not an officer of the BRT, was not responsible for the calling of the strike, and that his only connection with the strike was to send to the carrier a notice that the BRT had made the decision to conduct the strike. The Court of Appeals concluded that Mr. Carroll had no more responsibility for the strike than did the local officers of local units of the BRT with respect to whom the action was dismissed for lack of evidence. The D&RGW contends that Mr. Carroll was not only an officer of the BRT but was a governing officer of the organization with joint responsibility for calling and conducting the strike. The carrier's argument is wholly unsupported by the record, which fully supports the findings and conclusions of the Court of Appeals. The D&RGW argument is based in large part upon matters which are not of record in the case and which were not the subject of evidence to determine their relevancy to the calling and conduct of the strike. The only matters of record cited

by the D&RGW are not matters which establish the responsibility of Mr. Carroll for either the calling or the conduct of the strike.

ARGUMENT

I.

The Court of Appeals Correctly Held that the Action Could Not Be Brought Against the BRT in the Judicial District of Colorado Under the Venue Requirements of Section 1391(b) of Title 28 of the United States Code

The amended complaint in this case named as defendants the BRT, seven individuals who are chairmen of grievance committees of local lodges of the BRT, and Mr. R. E. Carroll, General Chairman of the Grievance Committee of BRT members on the property of the D&RGW (R. 7-10). The amended complaint rested on the grounds that the brief strike of May 16, 1960, in support of an Adjustment Board award was prohibited by the provisions of the Railway Labor Act.[8] Thus, as the D&RGW and the *amicus* National Railway Labor Conference agree (D&RGW Br. 2; Conference Br. 10), the amended complaint was subject to the venue requirements of Title 28, Section 1391(b) of the United States Code, which read as follows at the time of the Court of Appeals decision:[9]

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[8] Count II of the complaint alleged a common law conspiracy. However, no such conspiracy could exist unless the strike was prohibited by the Railway Labor Act and the District Court did not find any conspiracy (R. 57-62).

[9] No argument is made that Section 301(c) of the Labor-Management Relations Act (29 U.S.C.A., Section 185(c)) is applicable. Assuming *arguendo* that this Section applies to other than suits based on violations of contracts, it does not apply to actions arising under the Railway Labor Act. *Local Union No. 25 of International Brotherhood of Teamsters* v. *New York, New Haven and Hartford R. Co.*, 350 U.S. 155 (1956).

> "A civil action wherein jurisdiction is not founded solely on diversity of citizenship may be brought only in the judicial district where all defendants reside, except as otherwise provided by law."

Section 1391(b) was amended on November 2, 1966, by Public Law 89-714, after the Court of Appeals decision, to also authorize civil non-diversity actions in a judicial district "in which the claim arose". The D&RGW and the Railway Labor Conference refer to this amendment only in passing in footnotes (D&RGW Br. 20, footnote 1; Conference Br. 3, footnote 2) and neither suggests that the amendment is either applicable or, if applicable, determinative of the present case. Both proceed on the assumption that Section 1391(b) as it read prior to November 2, 1966, controls the present case. Neither brief suggests that the amendment may be applicable to the present case under the principle of *United States* v. *Alabama,* 362 U.S. 602.[10] It is the position of the BRT that venue did not lie for this action in the judicial district of Colorado under Section 1391(b) either as it read at the time of the Court of Appeals decision or after the amendment of November 2, 1966, because the BRT is neither a "resident" of the judicial district of Colorado within the meaning of that Section nor did the claim of the D&RGW arise within that judicial district within the meaning of the amended Section.

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[10] The pending D&RGW petition for certiorari in Case No. 1141 argues against the decision of the United States Court of Appeals applying to a National Railroad Adjustment Board award the amendment of June 20, 1966, to the Railway Labor Act (Public Law 89-456) which became effective while the suit to enforce the award was before the Court of Appeals. The BRT in its brief in opposition to the petition argues in support of this decision and application of the statute.

Assuming that the amendment is applicable to the present case, the record does not permit a determination to be made that the D&RGW claim arose in the judicial district of Colorado.

The decision to conduct a strike was made by the President of BRT in Cleveland, Ohio (R. 148), so that a D&RGW claim that such strike violated the Railway Labor Act arose in Ohio. *Lodge No. 42 of the International Brotherhood of Boilermakers, Etc.* v. *International Brotherhood of Boilermakers, Etc.*, 324 F. 2d 201 (6th Cir., 1963), *cert. den.* 376 U.S. 913; *Coleman* v. *Brotherhood of Railway and Steamship Clerks*, 228 F. Supp. 276 (D.C. N.York, 1964); cf. *George* v. *Bricklayers, Masons and Plasterers International Union*, 255 F. Supp. 239 (D.C. Wisc., 1966).

Moreover, a part of the strike and a resulting part of the carrier's loss and damage claim occurred only in Utah where a portion of the diversion took place (R. 20, 59). Thus, the D&RGW cannot assert that its entire claim arose in Colorado. It can only put its claim into a single package for venue purposes by suing the BRT where it "resides".

The undisputed facts pertinent to the residence of BRT are that the BRT is an unincorporated labor organization whose headquarters are maintained in Cleveland, Ohio, as provided in Section 3 of its Constitution, and which does not maintain any office in the judicial district of Colorado. The only connection of the BRT with the judicial district of Colorado is that there are organized within the district local lodges of BRT with members employed by the D&RGW (R. 5-6, 11-12).

The Court of Appeals held that venue for the action was governed by Section 1391(b) of Title 28 of the

United States Code; that Section 1391(c) was not applicable to unincorporated associations; that the BRT did not reside within the judicial district of Colorado as required by Section 1391(b); and that, therefore, the action did not meet the venue requirements of Section 1391 (R. 150-152). It is respectfully submitted that this decision is in accord with the language and structure of the statute, its legislative history, and recognized rules of statutory construction. It is also submitted that the arguments of the petitioner D&RGW and the *amcus curiae* National Railway Labor Conference constitute purely legislative reasons for applying Section 1391(c) to unincorporated labor organizations contrary to the plain and unambiguous language of that Section and are reasons which should be directed to the Congress and not to the courts and are, in fact, not sound.

A. The language of the statute clearly supports the Court of Appeals decision

An unincorporated association such as the BRT may be sued in a Federal district court to enforce a Federal right as in this case as a jural entity. *United Mine Workers* v. *Coronado Coal Co.*, 259 U.S. 344; Rule 17(b) of the Federal Rules of Civil Procedure. Prior to the revision of the United States Code, adopted June 25, 1948, the venue requirements for Federal courts generally were set forth in Section 112 of Title 28 of the United States Code, which provided in pertinent part that "no civil suit shall be brought in any district court against any person by any original process or proceeding in any other district than that whereof he is an inhabitant . . ." This requirement had remained unchanged since the Judiciary Acts of 1887 (24 Stat.

552) and 1888 (25 Stat. 443).[11] Under the "inhabitant" requirement, a corporation was an inhabitant only of the State of its incorporation and could not be sued elsewhere. *Suttle* v. *Reich Bros. Construction Co.*, 333 U.S. 163 (1948). An unincorporated association was regarded as an "inhabitant" only of the judicial district in which was located its principal place of business. *Sperry Products* v. *Association of American Railroads*, 132 F. 2d 408 (2nd Cir., 1942); *Brotherhood of Locomotive Firemen & Enginemen* v. *Graham*, 175 F. 2d 802 (D.C. Cir., 1948). The D&RGW has recognized this application of the statute both in its petition for a writ of certiorari and in its brief. In its reply to BRT's brief in opposition to the petition for certiorari, the railroad stated that (Br. 4) "it was necessary at that time [i.e. 1947] to provide specifically for actions against unincorporated associations in districts in which they were doing business, if the associations did not maintain their principal places of business therein". In its brief, the D&RGW has set forth the same application of the venue statute prior to 1948 (Br. 7, 8, 13).

This Court did not rule on the meaning of "inhabitant" as applied to an unincorporated association in Section 112. In *Graham* v. *Brotherhood of Locomotive Firemen & Enginemen*, 338 U.S. 232 (1949), the Court held that there was venue for an action against a railway labor organization in the District of Columbia under the District of Columbia venue statute permitting suits against a defendant "found" within the District. With respect to the holding of the District of

[11] Prior to that time and dating from the Judiciary Act of 1789, general Federal venue depended upon (1) residence, or (2) where the defendant could be found.

Columbia Circuit Court of Appeals that the unincorporated association was not an "inhabitant" of the District of Columbia within the meaning of Section 112, this Court stated as follows: (pages 235, 236)

> "This cause of action is founded on federal law, and the venue provision generally applicable to federal courts at the time this action was commenced required such actions to be brought in the district whereof defendant 'is an inhabitant.' 28 USCA § 112. Effective September 1, 1948, this provision was modified to require that such actions be brought 'only in the judicial district where all defendants reside, except as otherwise provided by law.' 28 USC (Supp II), § 1391(b). It was assumed in the courts below, and since it involves a question of fact we do not stop to inquire as to whether they were correct in so doing, that if this general federal venue statute is the sole authority for bringing this case in the District of Columbia, the venue could not be supported, as this defendant claims neither to reside in nor to inhabit the District."

It should be observed that this Court stated that the question was one of fact and not one of whether the phrase "inhabitant" meant other than the principal place of business of an unincorporated association.

When the United States Code was revised in 1948, the provisions of Section 112 of Title 28 were incorporated into Section 1391(b) of Title 28 of the revised Code with respect to non-diversity suits and the venue requirement was changed from one of the judicial district of which the defendant was an "inhabitant" to the judicial district where the defendant or all defendants reside. The Reviser's Notes attached to the Report of the Committee of the Judiciary of the House of Representatives on the proposed legislation, dated April 27,

1947, showed that this change was one for purposes of clarity only and that the intent of the legislature was that the term "inhabitant" and the term "resident" were accepted as synonymous.[12] This Note reads as follows:

> "Word 'reside' was substituted for 'whereof he is an inhabitant' for clarity inasmuch as 'inhabitant' and 'resident' are synonymous. (See Ex parte Shaw, 1892, 12 S.Ct. 935, 145 U.S. 444, 36 L.Ed. 768; Standard Stoker Co., Inc. v. Lower, D.C., 1931, 36 F.2d 678; Edgewater Realty Co. v. Tennessee Coal, Iron & Railroad Co., D.C., 1943, 49 F.Supp. 807."

It would appear clear that under the revised Federal venue statute of 1948 a non-diversity action against an unincorporated association could be brought only within the judicial district where it has its principal place of business. This obvious conclusion is set forth in Volume 1 of Moore's "Federal Practice", page 1483, as follows:

> "When an unincorporated association or partnership sues or is sued as an entity, it is a resident where it has its principal place of business. . ."

However, the D&RGW contends that the provisions of Section 1391(c) of Title 28 of the United States Code changed the rule prevailing prior thereto and that under these provisions an unincorporated association may be sued in any judicial district in which it is "doing business", i.e. in which it has members which it represents. Section 1391(c) reads as follows:

> "A corporation may be sued in any judicial district in which it is incorporated or licensed to do

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[12] House Report No. 308, accompanying H.R. 3214 of First Session of 80th Cong., April 27, 1947.

> business or is doing business, and such judicial district shall be regarded as the residence of such corporation for venue purposes."

There can be no question but that Section 1391(c) broadened the general Federal venue requirements under which a corporation could previously be sued only in a state of its incorporation so that it can now be sued also where it is licensed to do business or is doing business. *Pure Oil Company* v. *Suarez,* 384 U.S. 202 (1966). In that case, this Court stated as follows with respect to the effect of Section 1391(c): (page 204)

> "The effect of § 1391(c) was to broaden the general venue requirements in actions against corporations by providing a forum in any judicial district in which the corporate defendant 'is doing business.' See Moore, Commentary on the Judicial Code 193-194 (1949); 1 Barron and Holtzoff, Federal Practice and Procedure, § 80, at 386 (Wright rev. 1960). It seems manifest that this change was made in order to bring venue law in tune with modern concepts of corporate operations."

Section 1391(c) is, however, by its specific terms limited to corporations. Its language is clear and unambiguous and by recognized rules of statutory construction is not subject to a broadening by interpretation to include unincorporated associations. *Flora* v. *United States,* 362 U.S. 145; *C-O-Two Fire Equipment Co.* v. *Barnes,* 194 F. 2d 410 (7th Cir., 1952), *cert. den.* 343 U.S. 925, aff'd 344 U.S. 861. In the latter case, the Seventh Circuit spoke as follows with respect to Section 1391(c): (page 413)

> "We agree with the intervenor's contention that the phraseology of Sec. 1391(c) is clear, plain and

unambiguous and is not susceptible to interpretation or construction."

The construction urged by the D&RGW would, therefore, add language to Section 1391(c) which is simply not there.

B. There is no legislative history or other materials to support a revision through interpretation of the statutory language

Although their argument does clear violence to the statutory language, both the D&RGW and the National Railway Labor Conference contend that the reading of Section 1391(c) so as to include unincorporated associations is a necessary implication. This argument is based upon the premises that prior to the 1948 revisions of the Judicial Code the prevailing authority held that an unincorporated association was subject to the same venue requirements as those applicable to a corporation and that, therefore, when Congress revised the general venue provisions in 1948, it did so in the light of this prevailing authority and must have intended to include unincorporated associations within the scope of Section 1391(c) although the language is limited to corporations. It is respectfully submitted that this argument will not stand analysis.

It should be first observed that the premise of the argument, i.e. that prior to the 1948 revisions the prevailing authority held that an unincorporated association was subject to the same venue requirements as those applicable to corporations, is incorrect. The argument is based upon the language in the decision in *Sperry Products* v. *Association of American Railroads,* 132 F. 2d 408 (2nd Cir., 1942), comparing unincorporated associations to corporations and arriving at the conclusion that both have a "presence" in states other

than their state of incorporation or the state in which their principal office is located. However, that case recognizes that mere "presence" was not enough to establish that either a corporation or an unincorporated association was an "inhabitant" of a particular judicial district and, in fact, held that an unincorporated association was an "inhabitant" for venue purposes only of the judicial district in which was located its principal place of business. In contrast, the place of habitation of a corporation for venue purposes prior to 1948 was the state of incorporation which was not necessarily the location of the corporation's principal place of business. *Suttle* v. *Reich Bros. Construction Co.*, 333 U.S. 163 (1948).

Moreover, assuming *arguendo* that the premise of the argument is correct, the conclusion of the carrier is not a necessary or even a logical implication. The requirements for interpretation by implication are as follows: (*United States* v. *Jones*, 204 F. 2d 745 at 754, *cert. den.* 346 U.S. 854)

> "Necessary implication refers to a logical necessity; it means that no other interpretation is permitted by the words of the Acts construed; and so has been defined as an implication which results from so strong a probability of intention that an intention contrary to that imputed cannot be supported. 42 C.J.S., page 405 and cases there cited. The term is used where the intention with regard to the subject matter may not be manifested by explicit and direct words, but is gathered by implication or necessary deduction from the circumstances and the general language."

Obviously, the implication which the D&RGW seeks to read into Section 1391(c) is not a logical necessity or

one that results from so strong a probability of intention that a contrary contention cannot be supported. Indeed, given the railroad premise that venue requirements as to corporations and unincorporated associations were the same prior to the 1948 revisions, the logical implication to be derived from those revisions is that Congress intended by limiting the language of Section 1391(c) to change venue requirements as to corporations without making a change with respect to unincorporated associations.

The D&RGW suggests (Br. 15) that the action of Congress in authorizing suits under Section 301 of the Labor-Management Relations Act of 1947 (29 U.S.C.A., Section 185) to be brought against a labor organization in any district in which it is engaged in representing or acting for employee members supports the carrier's construction of Section 1391(c). However, the fact that Congress recognized the need to make such a specific provision for Section 301 suits and its failure to make any similar provision at all in Section 1391(c) argues for a contrary conclusion. Since prior to the enactment of Section 1391(c) a labor organization could be sued under the general venue statute only in the judicial district of its principal place of business or headquarters, it is only logical that if Congress had intended to broaden this in the 1948 revisions it would have specifically done so as it did in the enactment of Section 301 of Title 29.

The D&RGW also argues (Br. 16, 35, 36) that the decision in *Pure Oil Company* v. *Suarez,* 384 U.S. 202, supports its construction of Section 1391(c). However, that case did not by interpretation broaden Section 1391(c) and insert therein provisions not found in the Section, as the carrier now proposes, but simply

stated that the definition therein of a residence was applicable to the definition of a residence of a corporation under the Jones Act. In other words, this Court found that the Jones Act did not intend to change the definition of a residence of a corporation. In contrast, the carrier is here trying to use the definition of a corporation to define the residence of an unincorporated association.

C. The statutory interpretation urged by petitioner can be made only by outright legislation in violation of recognized rules of statutory construction

The erroneous nature of the implication argument of the railroads is demonstrated by reference to the decision in *Rutland Railway Corp.* v. *Brotherhood of Locomotive Engineers,* 307 F. 2d 21 (2nd Cir., 1962), *cert. den.* 372 U.S. 954, upon which they rely. The Second Circuit in that case made no effort to read unincorporated associations into Section 1391(c) by implication. It simply seized the bull by the horns and legislated for purely legislative reasons. It recognized in the following statement that to include unincorporated associations within Section 1391(c) would be to read words into the Section which simply are not there: (page 29)[13]

> "It is true that we would be reading into 28 U.S.C. § 1391(c) words which are not there if we should

[13] The Second Circuit also recognized that the reading of "unincorporated associations" into Section 1391(c) created difficulties within the rule of statutory construction expressed in the phrase "expressio unius est exclusio alterius", but disregarded the problem by the unsupported statement that it did not find any manifestation of a Congressional policy of excluding unincorporated associations from Section 1391(c). The exclusion lies, of course, in the clear language which renders unnecessary any such interpretative explanation.

assert that that subsection states that it applies to unincorporated associations."

The Court goes on then, however, to do precisely that upon the grounds of "the practical requirements of litigation". This rationale for its holding reads as follows: (page 29)

> ". . . we follow the reasoning in Sperry Prods. and assimilate the residence of unincorporated associations under 28 U.S.C. § 1391(b) to that of corporations, 28 U.S.C. § 1391(c). Since the residence of a corporation for venue purposes has been expanded to include all the judicial districts in which the corporation is doing business, the residence of an unincorporated association for venue purposes should likewise be expanded to include all the judicial districts in which the unincorporated entity is doing business. We believe this accords with the practical requirements of litigation involving unincorporated associations."

It thus repudiates all of the recognized principles of statutory construction and assigns a pure legislative reason to broaden Section 1391(c) and insert into that Section language which it concedes is not there. Both the D&RGW and the *amicus* supporting the railroad ask this Court to engage in the same legislative process and support their arguments for such action entirely by reasons which should be addressed to Congress and not to the courts. This is precisely what this Court refused to do in *United Steelworkers of America* v. *Bouligny,* 382 U.S. 145 (1965). In that case, the Steelworkers requested that this Court determine the union's citizenship for the application of Section 1332 upon the basis of legislative reasons favorable to the union and which included the precise reason relied upon in the

Rutland case, i.e. that the distinction between corporations and unincorporated associations such as labor associations has become artificial and unreal. This Court rejected such reason as a basis for action, finding that the argument "however appealing" was addressed to an inappropriate forum and ought to be made to Congress and not to the courts. The pertinent portions of this Court's findings read as follows: (pages 149-151)

> "In recent years courts and commentators have reflected dissatisfaction with the rule of Chapman v. Barney. The distinction between the 'personality' and 'citizenship' of corporations and that of labor unions and other unincorporated associations, it is increasingly argued, has become artificial and unreal. The mere fact that a corporation is endowed with a birth certificate is, they say, of no consequence. In truth and in fact, they point out, many voluntary associations and labor unions are indistinguishable from corporations in terms of the reality of function and structure, and to say that the latter are judicial persons and 'citizens' and the former are not is to base a distinction upon an inadequate and irrelevant difference.
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> * * * * *
>
> "We are of the view that these arguments, however appealing, are addressed to an inappropriate forum, and that pleas for extension of the diversity jurisdiction to hitherto uncovered broad categories of litigants ought to be made to the Congress and not to the courts."

The Court of Appeals correctly held that the decision in the *Bouligny* case constituted "a rejection of the principle espoused by the Rutland case, upon which the Rio Grande relies to sustain venue" (R. 151). The D&RGW argues, however, that the rationale of the

Bouligny case is not applicable to the present case because one involves jurisdiction and the other involves venue (D&RGW Br. 29-32). However, such rationale embraces a universal principle of statutory construction which is not dependent upon the subject matter of the particular case. This principle is that the courts cannot for legislative reasons rewrite statutory provisions and that the arguments for such revisions should be addressed to the Congress and not to the courts. This principle is particularly applicable to the present case for statutory construction since the legislative reasons rejected by this Court in the *Bouligny* case are the identical reasons advanced in the *Rutland* case and by the D&RGW and the National Railway Labor Conference here as a basis for the courts to ignore the clear statutory language and rewrite the statute.

Both the D&RGW and the Railway Labor Conference suggest that there is a difference in that this Court in the *Bouligny* case was simply reaffirming prior determinations with respect to the status of unincorporated associations for diversity purposes while here an affirmance of the Court of Appeals would constitute a rejection of numerous cases and principles which have prevailed for many years with respect to the venue of Federal courts. However, such an assumption of the existing state of the venue decisions is entirely erroneous in the light of numerous decisions, other than the present Court of Appeals decision, which are contrary to the *Rutland* decision, which rely upon the statute itself and not upon extrinsic arguments, and which, contrary to the carrier's assertions, were made after the 1948 revisions to the venue statute. *Brotherhood of Locomotive Firemen & Enginemen* v. *Graham,* 175 F. 2d 802 (D.C. Cir., 1948); *Cherico* v. *Brotherhood of*

Railroad Trainmen, 167 F. Supp. 635 (S.D.N.Y., 1958); *Griffin* v. *Illinois Central R. Co.,* 88 F. Supp. 552 (N.D. Ill., 1949); *McNutt* v. *United Gas Workers,* 108 F. Supp. 871 (W.D. Ark., 1952); *Salvant* v. *Louisville & Nashville R. Co.,* 83 F. Supp. 391 (W.D. Ky., 1949). The *Rutland* decision itself (page 29) recognized and cited these decisions.

The D&RGW also suggests that if the decision in the *Bouligny* case is controlling then the residence of the BRT for venue purposes would be the aggregate residence of its members, not its principal place of business. However, this argument confuses the subject matter of the *Bouligny* case with the principle of statutory construction involved. There is no contention that the BRT cannot be sued as a jural entity for an alleged violation of the Railway Labor Act. Rule 17(b) of the Federal Rules of Civil Procedure specifically recognizes such a suit. The question as presented is whether or not Section 1391(c) of the general venue statute applies to such jural entity to determine its place of residence for venue purposes. The argument that it does is an argument which is clearly labeled by this Court in the *Bouligny* case as an argument to support legislation and not an argument to support statutory construction. The arguments of the railroads constitute an effort to confuse the principle involved. Even if the *Bouligny* case had not existed, this principle would prevent the obvious legislation involved in the *Rutland* decision. The signficance of the *Bouligny* case is that in such decision this Court gave judicial expression to the principle that the courts should not rewrite statutes for legislative reasons and applied that principle to the very reasons which are here advanced for rewriting of the congressional mandate. No amount of argument

can obscure that fact. The statute simply cannot be construed as the railroads want it to be construed except by an act of legislation.

D. The so-called practical arguments urged by the railroads as a basis to revise the statutory language are without merit

The D&RGW argues (Br. 22-29) that the judicial district of Colorado is the most appropriate forum for the present suit because the collective bargaining relationship between the parties, and the process through which the Brotherhood acts to represent the carrier's employees were all Colorado oriented. This phase of the carrier's argument is based entirely upon non-record materials from which conclusions are drawn which have never been tested by direct examination or cross-examination in court. The carrier did not place any facts in the record with respect to the extent to which its relationships with the BRT are carried on within Colorado or evidence with respect to the extent that actions concerning the events involved took place within Colorado. This Court can take judicial notice that the National Mediation Board under whose auspices contract negotiations are held is located in Washington, D. C., and that the National Railroad Adjustment Board which decides grievances and disputes concerning the interpretation and application of contracts is located in Chicago, Illinois. These two facts alone cast doubt on the accuracy of the carrier's non-record arguments.

The National Railway Labor Conference, also largely upon the basis of non-record facts, argues that affirmance of the Court of Appeals would adversely affect railroads by requiring that numerous important suits, particularly suits to enjoin

strikes violating the requirements of the Railway Labor Act, be instituted in inconvenient forums or prosecuted only against local officers of the union and not against the most important potential defendant, the national union itself. This argument, however, will not stand up. In the case of a suit to enjoin a strike, such as the strike of May 16, 1960, which gave rise to the present litigation, the carrier seeks immediate relief and can obtain such immediate relief not by suing the national union, which may not even hear about such a suit for several days, but by suing and serving the local officers. In the present case, the injunction suit to stop the strike, although it did name the BRT, was directed against the local officers and it was these officers who were served with the restraining order and who moved to call off the strike (R. 59). Indeed, the *amicus* Railway Conference brief argues the need to enjoin a General Chairman of a railway labor union, who is described as "the union's most important responsible local official", and who was in fact the individual served with the restraining order to enjoin the strike here involved (Conference Br. 3, footnote 2). It is clear that the only real purpose of the railroads is to subject the national treasury of a national union such as the BRT to damage suits in any forum in which it has members, which in practice means most of the judicial districts of the country, so that the railroad may be in a position to shop for a favorable forum.

The railroads also argue that under the Court of Appeals decision venue would be in a forum having relatively little connection with the controversy, far removed from the railroad and the employees involved, the subject matter of the litigation, the location of witnesses, records and the parties' principal representa-

tives in the dispute. It is argued that such a trial of such a case in such a forum would be excessively expensive and inconvenient. The fallacy of this argument is fully demonstrated by the present case. The suit was brought and prosecuted in the judicial district of Colorado, not by Colorado lawyers for the D&RGW, but by a Chicago law firm located approximately 1000 miles from the forum and these attorneys made the trips back and forth for the trial of the case (R. 3, 10, 69, 149). The principal witness in support of the railroad's claims of diversion of shipments was the Manager of Traffic Analysis of the Ford Motor Company, whose address was Dearborn, Michigan, and who traveled to Denver for the trial (R. 77-102). The carrier also relied upon evidence with respect to shipments from the Ford assembly plant at Milpitas, California (R. 20). The location of the attorneys, the principal witnesses, the records supporting the testimony of the principal witnesses all were far removed from the judicial district of Colorado. In contrast, they were close to the judicial district of Ohio in which the headquarters of the BRT are located. The carrier's cost figures were also based on data on file with the Interstate Commerce Commission in Washington, D. C. One of the principal evidentiary problems in the case was the unavailability of such data in Denver (R. 125). They would have been more available in Cleveland or in Washington, D. C., where the suit could have been brought. It is obvious that the D&RGW chose the forum which it did for reasons other than the convenience of its litigation or to minimize the expense thereof. The choice of the forum substantially increased the inconvenience as well as the expense of the trial.

The arguments of the railroad are simply a thin veneer to disguise support for a rule of law which would in effect permit them to choose their own forum for suing a national union such as the BRT. The BRT cannot sue the D&RGW on the union's home grounds. It must go to Colorado for most purposes or perhaps Salt Lake City to sue the D&RGW. It cannot sue in Cleveland. The same limited forums would be available in suits against other railroads. There is no reason in law, equity, or practically why the D&RGW and other railroads should not come to Cleveland if they want to subject the national treasury of the union to liability. Section 1404 of Title 28, which is discretionary, does not provide such equity as the carrier suggests.

II

The Court of Appeals Correctly Concluded that the District Court Should Have Dismissed the Action Against Mr. R. E. Carroll

The order of the District Court entered judgment in the sum of $37,988.37 in favor of the D&RGW against the BRT and Mr. R. E. Carroll (R. 62). Mr. Carroll appealed the judgment against him (R. 63). The Court of Appeals reversed the judgment against Mr. Carroll with the following finding: (R. 152)

> "The Railroad suggests that even if venue did not exist as to the Brotherhood, the proper procedure would be to drop it from the case and let the judgment stand against Carroll, a Colorado resident. Carroll was Chairman of the General Grievance Committee on the Rio Grande; he was not an officer of the union. So far as the record shows, Carroll's role in connection with the strike was limited to sending the Railroad notice of the Brotherhood's strike decision and thereafter ad-

> vising the local unions of the issuance of the restraining order. Carroll had no more to do with causing the strike than did the chairmen of the locals, and accordingly, he too should have been dismissed from the action."

The Court of Appeals decision also stated as follows with respect to the District Court's finding as to Mr. Carroll: (R. 152, footnote 3)

> "The trial court found only that Carroll was 'General Chairman of the General Grievance Committee of the Brotherhood on the property of the plaintiff' and that he notified the local groups to call off the strike after service of the temporary restraining order."

It is the carrier's contention that Mr. Carroll is not only an officer of the BRT but is the governing officer of that organization on the D&RGW (*cf.* Railway Labor Conference brief, page 3, footnote 2, describing a General Chairman as a "local official") and that he was jointly responsible with the BRT for the calling and conduct of the strike. It therefore argues that the action of the Court of Appeals in setting aside the judgment against Mr. Carroll was erroneous under Rule 52(a) of the Federal Rules of Civil Procedure (Br. 37-41). It is respectfully submitted that the carrier's contentions are wholly without merit.

The D&RGW argument that Mr. Carroll was an officer of BRT and hence responsible for the strike because he was General Chairman of the General Grievance Committee of BRT on the carrier property is not supported by the evidence.

The record shows that Mr. Carroll is elected to his position by chairman of grievance committees of local

lodges; that his salary is not paid by BRT but from funds contributed by members of the local lodges with representatives on the General Grievance Committee; and that the General Secretary-Treasurer of BRT testified without contradiction that Mr. Carroll "is not an officer of the Brotherhood of Railroad Trainmen" (R. 4-5). Nor did the District Court find that he was such an officer (R. 57-62).

In contrast, the D&RGW argues without any reference to the record that Mr. Carroll must be considered an officer of BRT because the General Grievance Committee is the instrumentality through which the BRT functions on the D&RGW and that the collective bargaining agreements between the carrier and the BRT are signed by Mr. Carroll alone. These are gratuitous conclusions without any foundation in the record. The D&RGW did not in the trial of the case believe it important to explore for the record the functions of the General Grievance Committee, to place the collective bargaining agreements in the record, or to explore the circumstances of the signing of the agreements. Having so failed, it cannot now rely upon such an argument.

Mr. Carroll's role of actual non-responsibility for the strike, as found by the Court of Appeals, is also fully supported by the evidence. The strike itself was authorized by the President of the BRT (R. 74). The original strike date was April 15, 1960. The President of the BRT notified the National Mediation Board by telegram that a strike had been authorized for such date and the Board, in turn, advised the D&RGW (R. 74, 148). The National Mediation Board then intervened under Section 5 of the Railway Labor Act (45 U.S.C.A., Section 155), and conducted unsuccessful

mediation. After the mediation terminated, the strike took place on May 16, 1960 (R. 74, 147). Mr. Carroll's only connection with the strike was his signature on a letter to the D&RGW advising the railroad that the strike would take place on May 16, 1960 (R. 147), and his subsequent transmittal to the local lodges by telephone and telegram advice that the District Court had issued a restraining order prohibiting the strike (R. 59, 74). The Court of Appeals correctly concluded that Mr. Carroll had no more to do with the strike than the chairmen of the locals and that the action should have also been dismissed as to him.

The D&RGW argues that the letter signed by Mr. Carroll and Mr. McDonald advising the D&RGW of the May 16, 1960, strike date (R. 147) shows a joint responsibility on their part for the strike. However, all that this letter shows in the context of the evidence is that the President of the BRT had authorized the strike which had originally been put off by National Mediation Board intervention, and that when a new date was set Mr. McDonald and Mr. Carroll notified the D&RGW of such date. The letter does not support the responsibility of Mr. McDonald, who was an officer of the BRT and who was not sued, much less the responsibility of Mr. Carroll. The D&RGW argues, however, that Mr. Carroll's responsibility is shown by the provisions of BRT rules, which it quotes in Appendix B to its brief, giving authority to the President of the BRT and General Grievance Committees to authorize strikes. These rules do not say that every strike will be jointly authorized by the President of the BRT and the General Grievance Committee and there is no evidence in the record that this strike was so jointly authorized. Indeed, the rules relied upon by

the D&RGW are not of record and there has been no trial of their application to this particular strike.

The D&RGW also argues that the fact that Mr. Carroll issued instructions to local lodges to call off the strike when he was served with a restraining order by the District Court shows that his authority was primary and that his instructions were final as to whether or not the strike was to continue or terminate. Mr. Carroll was a defendant in that action along with the chairmen of the local lodges having members employed by the D&RGW and consequently the restraining order was directed to both him and these local chairmen.[14] The restraining order was served upon Mr. Carroll (R. 59). His prompt notice to the local chairmen of the issuance of the restraining order and his instructions to call off the strike in accordance therewith do not prove his responsibility for the strike but only that he acted in a responsible manner to carry out the order of the District Court.[15]

There thus does not exist any factual basis for Mr. Carroll's responsibility and liability. Moreover, this Court has held that individual officers, agents, or members of a union may not be sued under Section 301 of the Labor-Management Relations Act for damages alleged to have been caused by an illegal strike called by a union. *Atkinson* v. *Sinclair Refining Co.*, 370 U.S.

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[14] See *Denver & R. G. W. R. Co.* v. *Brotherhood of Railroad Trainmen, et al.*, 185 F. Supp. 369 (1960).

[15] The D&RGW argues that the statements of position of the BRT before the District Court recognize the joint responsibility of Mr. Carroll for the strike (Br. 39-40). However, none of the carrier's quotations constitute a recognition of responsibility of Mr. Carroll for the strike as contrasted with the fact that there was evidence of his relationship to the strike as cited above.

238, 248 (1962); *Lewis* v. *Benedict Coal Corp.*, 361 U.S. 459, 470 (1960).

It is submitted that it is highly unreasonable to suppose that Congress would make it a national labor policy to exclude union members and agents from liability in suits specifically authorized under the National Labor Relations Act, and at the same time authorize such liability in suits based on the Railway Labor Act where it has not specifically provided for any type of suits against unions thereunder, and where even a suit for injunctive relief to enforce the duties of the statute must be implied. *Virginian Railway Co.* v. *System Federation No. 40, et al.*, 300 U.S. 515.

CONCLUSION

Upon the basis of the foregoing points and authorities, this Court should affirm the decision of the Court of Appeals.

Respectfully submitted,

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